FILED
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ALEXANDER L. STEVAS,

IN THE SUPREME COURT OF THE UNITED STATES

No. 84 - 273

JOSEPH H. RIDGE, EUNICE ROSS, RALPH H. SMITH, JR., AND J. WARREN WATSON,

Petitioners

VS.

COMMONWEALTH OF PENNSYLVANIA, STATE EMPLOYEES' RETIREMENT BOARD, et al.,

Respondents

BRIEF FOR RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the Pennsylvania Supreme Court properly dismissed as moot an appeal raising due process challenges to a lower court's approval of a consent decree when the appellants were permitted by the lower court to opt out of the class rather than being bound by the approved consent decree?

2. Whether petitioners were denied due process by a state trial court order approving a consent decree but allowing them, as class members, to opt out of the class rather than being bound by the terms of the approved consent decree?

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REASONS FOR DENYING THE WRIT

Petitioners challenge the procedures by which the state courts have approved the entry of a consent decree in a class action in which petitioners were members of the plaintiff class. Specifically, they apparently claim that the trial court failed to afford them adequate process before approving a consent decree which, as a compromise of disputed claims, gave members of the plaintiff class some benefits and, in return, imposed some costs. In addition, petitioners apparently contend that that Pennsylvania Supreme Court denied them due process in dismissing their appeal as moot without affording them an opportunity to argue their case on the merits. Both claims are frivolous.

As noted, the trial court in this case approved a consent decree which was a compromise. Under that decree, plaintiff's prevailed on some of their claims and defendants prevailed on some of theirs. The total effect was that members of the plaintiff class received some benefits, but also incurred some losses which partially offset their gains.[1] The trial court approved that compromise as fair to all parties, but, in addition, allowed any member of the

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[1]Specifically, members of the class received higher retirement benefit rates but agreed to pay a higher rate of contribution into the retirement fund. The disputed issue which was settled by this agreement was whether a statute which was declared unconstitutional insofar as it decreased retirement benefits should also be voided, as a matter of statutory construction, insofar as it lowered the contribution rate. If so, the same earlier statute which required higher benefits would apply to contribution rates, reinstating the higher contribution rates along with the higher benefits.

plaintiff class who was dissatisfied with the settlement to opt out. Obviously, any plaintiff class member taking advantage of that option would have to forego both the benefits and the detriments of the consent decree, but would be free to pursue his own action and seek to obtain a better result. Moreover, in such an action, they would have the benefit of the precedent established in this case, all of which was favorable to the plaintiffs. See Catania v. Commonwealth State Employees Retirement Board, 450 A.2d 1342 (Pa. S.Ct. 1982)(103a). McKenna v. Commonwealth State Employees Retirement Board, 433 A.2d 871, 495 Pa. 324 (1981)(84a). Thus, they would have access to full process of law concerning their claims.

When it granted petitioners an additional 30 days in which to opt out

of the class and avoid the effects of the consent decree, the trial court afforded petitioners full due process. At that point, any challenges which they might otherwise have had to that consent decree were rendered moot. Based on those facts, the Pennsylvania Supreme Court properly dismissed petitioners' appeal as moot. In so doing, that court was not required to grant oral argument, but rather properly relied upon the motion to dismiss the appeal filed by the respondents herein (46a) and the response thereto filed by petitioners (50a). Due process requires no more.

Accordingly, petitioners' claims are patently without merit and, in any case, raise no issues deserving of review by this Court. Their petition should, therefore, be denied.

Respectfully submitted,

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October 3, 1984

PROOF OF SERVICE

The undersigned counsel hereby certifies that on the 3rd of October, 1984, he caused to be served upon the following a true and correct copy of Brief for Respondents in Opposition to the within matter by mailing same, first-class postage affixed and prepaid in Harrisburg, Pennsylvania addressed as follows:

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